REMARKS

1. STATUS OF THE CLAIMS:

Claims 1-10, 14 and 15 are pending. Claim 9 has been amended.

In the Office Action, the specification was objected to for lacking headings; Claims 9, 14 and 15 were rejected under 35 USC 112, 1st ¶; Claim 4 was rejected under 35 USC 112, 2nd ¶ as employing the term "about"; and all claims were rejected as obvious in light of WO 02/26723 to Ancliff in view of Berge *et al.*

2. ORDER OF THE SPECIFICATION:

The Examiner's attention is directed to page 3 of the preliminary amendment filed with the application, inserting such headings. 37 CFR §1.77 sets forth the preferred although not required order of the specification and list of headings.

The application is believed to satisfy this desired but not mandatory format. Should there be some particular point that the Examiner finds objectionable, please contact Applicants' attorney at the number below.

3. PENDING CLAIMS 9, 14 AND 15 COMPLY WITH 35 USC 112, 1ST ¶:

Claim 9 has been amended to delete the term "or susceptible to" and to designate that the condition being treated comprises asthma and/or rhinitis. In light of these amendments, it is respectfully asserted that the claims are compliant with 35 USC 112, 1st ¶.

Withdrawal of the rejection is respectfully requested.

4. CLAIM 4'S USE OF THE TERM "ABOUT" DOES NOT RENDER THE CLAIM INDEFINITE.

Applicants respectfully request reconsideration of the Examiner's position concerning claim 4. The claim is definite in its current form. 35 USC 112, ¶4 dictates that "A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers". While for examination purposes, a claim is given its broadest reasonable interpretation, the Examiner must concede that an interpretation that would ignore a statutory requirement is not a "reasonable" one.

Here, claim 4 is dependent on claim 1, and incorporates into it the range set forth in claim 1. Thus, the term "about 2" in claim 4 allows some flexibility for value n which is not precisely 2. This minor deviation from 2 allows for, for example, a molar equivalent that does not necessarily end up as a whole number but still falls within the scope of the claim. While the term "about" provides a modicum of flexibility, it does not remove the limitations created by claim 1.

As a reasonable interpretation of claim 4 necessarily considers the statutory requirements of 35 USC 112, an interpretation of a dependent claim that would disregard this cannot be considered "reasonable" under these circumstances.

Thus, in line with the many instances where the courts as well as the Patent Office have found the modifier "about" to be perfectly acceptable, it is respectfully asserted that it is also acceptable in this case. Its inclusion does not render claim 4 indefinite.

Withdrawal of the rejection is requested.

5. THE CLAIMS ARE NOT RENDERED OBVIOUS BY WO 02/26723 A1.

WO 02/26723 A1 was based on a foreign priority filing made 29 September 2000. The application was filed as an international application under the PCT on 28 September 2001. The application, which identified the United States, was published on 4 April 2002 in the English language.

The present application is based on a priority filing made before the publication of the '723 reference. As this 28 March 2002 priority date precedes the publication date of WO 02/26723 A1 (which published 4 April 2002), the '723 reference does not constitute prior art under §102(a) or (b).

Under §102(e), the effective priority date of WO 02/26723 A1 is its international filing date, 28 September 2001. As the reference qualifies as prior art *only* under §102(e), the provisions of §103(c) come into play in determining obviousness.

35 USC 103 states:

Conditions for patentability; non-obvious subject matter.

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in **section 102** of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

(c)

(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of **section 102** of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The Examiner will note that both the '723 publication and the present application are assigned to a common owner, Glaxo Group Limited. Thus, under 35 USC 103(c)(1), the '723 publication cannot be relied on prior art for an obviousness analysis under §103.

The '723 reference does not disclose by itself each element of the pending claims. Therefore, the pending claims are not anticipated by the '723 reference. Moreover, in light of the co-ownership of both the '723 reference and applications, the '723 reference may not be used in determining obviousness as dictated by §103(c)(1).

As the claims are both novel and non-obvious over the '723 reference, we request that that the prior art objection be withdrawn, and all claims be allowed over the art of record.

CONCLUSION

In light of the comments and amendments made herein, reconsideration is hereby requested. It is respectfully asserted that the specification and claims are in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or to credit any overpayment, particularly including any fees required under 37 CFR §1.16 or §1.17, and any necessary extension of time fees, to Deposit Account No. 07-1392.

Respectfully submitted:

Dated: October 10, 2008

/ James P. Riek /
By: _____
James P. RIEK
Attorney of Record
Reg. No. 39,009
Tel.: (919) 483-8022
Fax: (919) 483-7988